

Date of Hearing: July 2, 2025

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

SB 499 (Stern) – As Amended May 8, 2025

SENATE VOTE: 29-1

SUBJECT: Residential projects: fees and charges: emergency services

SUMMARY: Authorizes local agencies to collect impact fees before issuance of the certificate of occupancy if the fees are collected for parkland or recreational facilities that serve an emergency purpose. Specifically, **this bill:**

- 1) Authorizes local agencies to require payment of impact fees or charges prior to the date the first certificate of occupancy or first temporary certificate of occupancy is issued for a designated residential development project provided the local agency does both of the following:
 - a) Determines that the fees or charges will be collected for parkland or recreational facilities that are identified for an emergency purpose beyond general recreational or aesthetic use; and,
 - b) Identifies the parkland or recreational facility in the safety element. A local hazard mitigation plan may be used in lieu of the safety element until January 1, 2031.

EXISTING LAW:

- 1) Establishes the Mitigation Fee Act, which governs fees local agencies may levy on development projects. [Government Code (GOV) §§ 66000-66025]
- 2) Requires a local agency, in any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency, to do all of the following: [GOV § 66001(a)]
 - a) Identify the purpose of the fee;
 - b) Identify the use to which the fee is to be put. If the use is financing public facilities, the facilities shall be identified. That identification may, but need not, be made by reference to a capital improvement plan, may be made in applicable general or specific plan requirements, or may be made in other public documents that identify the public facilities for which the fee is charged;
 - c) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed; and,
 - d) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

- 3) Requires a local agency, in any action imposing a fee as a condition of approval of a development project by a local agency, to determine how there is a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed. [GOV § 66001(b)]
- 4) Prohibits a local agency that imposes any fees or charges on a residential development for the construction of public improvements or facilities from requiring the payment of those fees or charges until the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first, with specified exceptions. [GOV § 66007(a)]
- 5) Authorizes the local agency to require the payment of fees or charges outlined in 4), above, at an earlier time if either of the following conditions is met: [GOV § 66007(b)(1)]
 - a) The local agency determines that the fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriate and for which the local agency has adopted a proposed constructions schedule or plan before final inspection or issuance of the certificate of occupancy; or,
 - b) The fees or charges are to reimburse the local agency for expenditures previously made.
- 6) Provides that 5), above, does not apply to units reserved for occupancy by lower income households included in a residential development proposed by a housing developer in which at least 49 percent of the total units are reserved for occupancy by lower income households at an affordable rent, as specified. [GOV § 66007(b)(2)]
- 7) Prohibits a local agency from requiring the payment of fees or charges for the construction of public improvements or facilities until the date of the first certificate of occupancy or first temporary certificate of occupancy is issued, whichever occurs first, for “designated residential development projects,” as defined. [GOV § 66007(c)]
 - a) Provides that utility service fees related to connections may be collected at the time an application for service is received, provided that those fees do not exceed the costs incurred by the utility provider resulting from the connection activities;
 - b) Provides that 7), above, does not apply if construction of the residential development does not begin within five years of the date upon which the building permit is issued.
- 8) Authorizes a local agency to require the payment of the fees and charges for designated residential development projects at an earlier time if either of the following conditions is met: [GOV § 66007(c)(2)(A)]
 - a) The fees or charges are to reimburse the local agency for expenditures previously made to the extent those expenditures have not been paid or reimbursed by another party; or,
 - b) The local agency determines both of the following:
 - i) The fees or charges will be collected for any of the following public improvements or facilities:

- A) Public improvements or facilities related to providing water service to the residential development;
 - B) Public improvements or facilities related to providing sewer or wastewater service to the residential development;
 - C) Public improvements or facilities related to providing fire, public safety, and emergency services to the residential development;
 - D) Roads, sidewalks, or other public improvements or facilities for the transportation of people that serve the development, including the acquisition of all property, easements, and rights-of-way that may be requires to carry out the improvements or facilities; or,
 - E) Construction and rehabilitation of school facilities, if a school district has as five-year plan.
- ii) An account has been established and funds appropriated for the public improvements or facilities described in i), above. “Appropriated” means authorization by the governing body of the local agency for which the fee is collected to make expenditures and incur obligations for specific purposes.

FISCAL EFFECT: None.

COMMENTS:

- 1) **The Mitigation Fee Act.** When approving development projects, cities and counties can require the applicants to mitigate the project's effects by paying fees – known as impact fees, mitigation fees, or developer fees. Impact fees stem from a straightforward principle: new developments should pay for the impacts that they have on the community and the burden they impose on public services. Prior to establishing, increasing, or imposing a fee as a condition of approving a development project, the Mitigation Fee Act requires local officials to:
 - a) Identify the fee's purpose;
 - b) Identify the fee's use, including the public facilities to be financed;
 - c) Determine a reasonable relationship between the fee's use and the development;
 - d) Determine a reasonable relationship between the public facility's need and the development; and,
 - e) Determine a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.

The developer is typically required to pay multiple impact fees, each corresponding to different public services or infrastructure needs that the development will affect, such as roadways, schools, water and sewer infrastructure, public facilities, affordable housing, and parks.

- 2) **“Essential Nexus” and “Rough Proportionality.”** The U.S. Supreme Court and the California Supreme Court issued a series of decisions in the 1980s and 1990s that affected the scope and application of impact fees. In its 1987 *Nollan* decision, the U.S. Supreme Court said there must be an "essential nexus" between a project's impacts and the conditions for approval. In the 1994 *Dolan* decision, the U.S. Supreme Court opined that conditions placed on development must have a "rough proportionality" to a project's impacts.

In the 1996 *Ehrlich* decision, the California Supreme Court distinguished between "legislatively enacted" conditions that apply to all projects and "ad hoc" conditions imposed on a project-by-project basis. *Ehrlich* applied the "essential nexus" test from *Nollan* and the "rough proportionality" test from *Dolan* to "ad hoc" conditions. The Court did not apply the *Nollan* and *Dolan* tests to the conditions that were "legislatively enacted." In other words, local officials face greater scrutiny when they impose conditions on a project-by-project basis.

As a result of these decisions and the Mitigation Fee Act, local agencies must conduct a nexus study to ensure that any proposed impact fees meet these legal tests. Other requirements in the Mitigation Fee Act ensure that impact fees are appropriately levied and spent, including that a local agency must:

- a) Hold at least one open and public meeting prior to levying a new fee or increasing an existing one;
 - b) Deposit and spend the fees within five years of collecting them; and,
 - c) Refund fees or make specific findings on when and how the fees will be spent for construction, if the fees are not spent within five years of collection.
- 3) **Impact Fee Uses.** Different jurisdictions charge and use impact fees differently. The Department of Housing and Community Development's 2019 report on Residential Impact Fees in California: Current Practices and Policy Considerations to Improve Implementation of Fees Governed by the Mitigation Fee Act describes: "Our case studies display a variance in fee revenue indicative of the breadth of ways in which localities rely on impact fees to fund public services... Fremont collected the highest amount of fee revenue among the case studies... primarily driven by its prioritization of a high level of service for parkland and facilities... Roseville depends on impact fees to fund development-related infrastructure like transportation and utilities... Riverside County relies on revenue to fund a variety of services, including parks, transportation, fire, and library improvements... Oakland prioritizes affordable housing fees... Los Angeles also recently implemented affordable housing fees... parks are a priority for Los Angeles, and the city asks development to support new parks within a certain radius of the project in order to maintain existing levels of service."

- 4) **Impact Fee Collection.** Generally, cities and counties cannot collect impact fees before they conduct the final inspection or issue a certificate of occupancy, whichever occurs first. A certificate of occupancy is issued by the local code enforcement agency to indicate compliance with all applicable state and local building code and health and safety code requirements; it is generally issued after the final inspection, though a temporary certificate of occupancy may be issued before the final inspection.

Utilities can collect impact fees at the time the utility receives an application for service, which can happen before a final inspection. For residential developments with more than one dwelling, the local agency can determine whether developers pay fees on a pro rata or on a lump sum basis when the first dwelling in the development receives its final inspection or certificate of occupancy, whichever occurs first.

A local agency can require payment earlier than described above if it has adopted a proposed construction schedule or to reimburse the local agency for expenditures already made, so long as the project does not come from a nonprofit developer that reserves at least 49 percent of its units for lower income households. Cities and counties can require performance bonds or letters of credits to guarantee these specific payments.

If the developer has not fully paid the impact fees before the local agency has issued a building permit for construction of any portion of the residential development, the local agency can require the developer, as a condition of receiving the building permit, to enter into a contract to pay the fees, secured by a lien on the property. Additionally, the local agency can require the developer to provide notification of the opening of any escrow for the sale of the property, and require the escrow instructions to include a disclosure that the fees must be paid before disbursing proceeds to the seller. The local agency can defer collection of one or more fees up to the close of escrow.

- 5) **SB 937 of 2024.** SB 937 (Wiener), Chapter 290, Statutes of 2024, created new types of residential development projects called “designated residential development projects,” which have different impact fee collection requirements. Designated residential development projects include any residential development that meets any of the following conditions:

- a) Contain 10 units or less with the exception of manager’s units;
- b) 100% of the units are affordable;
- c) Meet requirements under recent housing streamlining legislation, including affordability; or,
- d) Use Density Bonus Law, which grants projects that provide specified percentages of affordable units relief from some local development standards.

For these projects, local agencies generally cannot collect fees earlier than final inspection or certificate of occupancy, unless it is to reimburse expenditures previously made. They can only collect earlier if the local agency has not received payment or reimbursement by another party, or if the revenue supports:

- a) Public improvements related to providing water, sewer, wastewater, fire, public safety, or emergency services to the residential development;
- b) Roads, sidewalks, or other public improvements or facilities for the transportation of people that serve the development, including the acquisition of all property, easements, and rights-of-way that may be required to carry out the improvements or facilities; or
- c) Construction and rehabilitation of school facilities, if a school district has a five-year plan.

Additionally, the following conditions apply for these projects:

- a) Local agencies cannot require payment of fees and charges until certificate of occupancy, unless construction does not begin within five years of when the local agency issues the building permit;
- b) The amount of fees and charges must be the same amount as the developer would have paid prior to the issuance of building permit, and the local agency cannot charge interest;
- c) If the housing development includes more than one dwelling, the local agency can determine whether the developer should pay fees on a pro rata basis for each dwelling, or a certain percentage of total dwellings, when it receives its certificate of occupancy, or on a lump sum basis when all the dwellings receive their certificate of occupancy; and
- d) If the developer decides not to post a performance bond or letter of credit, local agencies can collect fees by making them a lien upon the land.

SB 937 specified exceptions to the prohibition on local agencies to collect impact fees until the final inspection or issuance of the certificate of occupancy. Among those exceptions are impact fees that are for “public improvements or facilities related to providing fire, public safety, and emergency services to the residential development,” so long as an account has been established and funds appropriated for the public improvements or facilities.

- 6) **Safety Element.** Every city and county must adopt a general plan with seven mandatory elements: land use, circulation, housing, conservation, open space, noise, and safety. The safety element establishes policies and programs to protect the community from risks associated with seismic, geologic, flood, and wildfire hazards, as well as from other concerns such as drought. The safety element also addresses evacuation routes, military installations, peak load water supply requirements, and minimum road widths and clearances around structures. Existing law requires the safety element to be updated upon revision of the housing element, which occurs every five or eight years, in accordance with the schedule set by the Department of Housing and Community Development for that jurisdiction.
- 7) **Local Hazard Mitigation Plan.** The Federal Emergency Management Agency (FEMA) defines hazard mitigation as any action taken to reduce or eliminate the long-term risk to human life and property from natural hazards. Local hazard mitigation plans (LHMPs) allow state, tribal, and local governments to develop long-term strategies for protecting people and property from natural disaster risks and vulnerability that are common in their area. These plans help guide land use, emergency preparedness, and infrastructure investments. LHMPs are required for jurisdictions to be eligible for certain types of federal disaster funding from

FEMA. LHMPs must be reviewed and updated every five years and formally adopted by each participating jurisdiction's governing body before receiving approval from FEMA. According to the California Governor's Office of Emergency Services website, 45 out of 58 counties have approved LHMPs, while 13 counties have expired LHMPs.

- 8) **Bill Summary.** This bill authorizes local agencies to collect impact fees before issuance of the certificate of occupancy or temporary certificate of occupancy, whichever occurs first, if the impact fees are collected for parkland or recreational facilities identified for an emergency purpose in the city's or county's safety element or, until January 1, 2031, the local hazard mitigation plan. The local agency must also meet the requirement in existing law that an account has been established and funds appropriated for the parkland or recreational facilities.

This bill is sponsored by the California Association of Recreation and Park Districts.

- 9) **Author's Statement.** According to the author, "In its rebuilding and future development, California must carefully plan with urban fire mitigation and public safety top of mind. SB 499 clarifies that parkland and recreational facilities are exempt from certain fee deferrals when identified as a mitigation strategy in a local agency's hazard mitigation plan.

"Parks and recreation centers are essential utilities for emergency management and response, serving as heating and cooling centers, gathering locations for coordinated evacuations, and staging areas for other types of natural disasters such as flooding and wind events. Most importantly, parklands serve as fuel breaks, which is a critical tool in community hardening and fire resiliency. The recent Palisades and Eaton Fires devastated densely populated regions, with over 37,000 acres and 16,000 structures destroyed by these fires alone. As California continues to develop and rebuild stronger, emergency-response readiness and holistic community protection must be uplifted.

"By clarifying this exemption from certain fee deferrals, SB 499 affirms the essential role of parks in providing safety and support during crises and facilitates local strategic planning and mitigation efforts that utilize all available resources to protect residents effectively."

- 10) **Policy Considerations.** The Committee may wish to consider whether a local hazard mitigation plan should be able to be used in lieu of a safety element in perpetuity, rather than just until January 1, 2031.
- 11) **Committee Amendments.** In order to address the policy consideration raised above, the Committee may wish to consider the following amendment:

Section 66007(c)(2)(A)(ic)

~~(Ia)~~ Public improvements or facilities related to providing fire, public safety, and emergency services to the residential development, including parkland and recreational facilities identified in its safety element, *element or local hazard mitigation plan*, provided the parkland and recreational facilities are identified for an emergency purpose beyond general recreational or aesthetic use.

~~(Ib) For purposes of this sub-subclause, a local hazard mitigation plan may be used in lieu of a safety element until January 1, 2031.~~

- 12) **Previous Legislation.** SB 937 (Wiener), Chapter 290, Statutes of 2024, prohibited a local government from requiring payment of fees or charges for public improvements or facilities on a designated residential development project before the development receives a certificate of occupancy, except under certain conditions. SB 937 authorized a local government to collect certain unpaid fees or charges in accordance with a specified procedure if the housing developer does not post a performance bond or letter of credit.
- 13) **Arguments in Support.** The California Association of Recreation and Park Districts, sponsor of this bill, states, “As California faces increasingly severe wildfires and other climate-driven disasters, it is vital that we empower communities with every available tool for mitigation and emergency response. Parks and recreational areas are more than community amenities—they are integral components of our public safety infrastructure. These spaces serve as fuel breaks, emergency gathering sites, evacuation staging areas, and heating or cooling centers during climate emergencies.

“Recent events such as the Palisades and Eaton Fires have underscored the need for comprehensive, cross-sector planning. In 2018, for example, the Conejo Recreation and Park District’s North Ranch Neighborhood Park played a crucial role as a fuel buffer during the Woolsey Fire, helping protect nearby homes from devastation. SB 499 acknowledges and codifies the essential role that parks and recreational facilities play in emergency preparedness and wildfire resiliency.

“By clarifying that these facilities are eligible for fee deferral exemptions under existing development statutes, SB 499 will remove ambiguity and support more effective local planning and resource allocation. It complements the intent of SB 937 (Wiener) [Chapter 290, Statutes of 2024] by ensuring that park infrastructure—when directly related to public safety—is not overlooked in development-related funding decisions. CARPD is committed to supporting practical, forward-thinking solutions that build community resilience and protect Californians from the growing threats of climate change. We thank you for your leadership on this important issue.”

- 14) **Arguments in Opposition.** According to the Housing Action Coalition and California YIMBY, “The language in SB 937 that was ultimately signed into law was carefully negotiated with the Assembly and Senate Local Government Committees in an effort to strike the balance between local agency need and the alleviation of some of the financial barriers that prevent housing development. While it is our understanding that the intent of SB 499 is to expand the exemption to include park improvements and development to ensure fire, public safety, and emergency management readiness, we believe the language in print would inadvertently create a much broader exemption than intended. We are concerned that this change could open the door to impact fees being charged upfront, negatively impacting project feasibility and ultimately resulting in fewer housing units being built.”

According to the California Building Industry Association, “Impact fees for parks are among the most expensive of all fees, exceeding \$60,000 per housing unit in some instances. By forcing housing creators to pay these impact fees earlier in the development process, the construction of housing for working families will be negatively impacted, thereby exacerbating the state’s housing crisis.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Recreation and Park Districts (CARPD)
Ambrose Recreation and Park District
Auburn Area Recreation and Park District
California Fire Chiefs Association
California Special Districts Association
City of Belmont
City of Rancho Cucamonga
Conejo Recreation and Park District
Cordova Recreation and Park District
Desert Recreation District
Fire Districts Association of California
Fulton-el Camino Recreation and Park District
Hayward Area Recreation and Park District
Mendocino Coast Recreation and Park District
North of the River Recreation and Park District
Pleasant Hill Recreation and Park District
Rim of the World Recreation and Park District
Rio Linda Elverta Recreation and Park District
Truckee Donner Recreation and Park District
Valley-wide Recreation and Park District
Wasco Recreation and Parks District
Western Gateway Recreation and Park District

Opposition

California Building Industry Association
California YIMBY
Housing Action Coalition

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